

## **REMARKS/ARGUMENTS**

The Office Action has been carefully considered. In the Office Action, claims were rejected in the following manner.

1. Claims 19 and 23 were objected to because of informalities.
2. Claim 27 was rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.
3. Claims 11, 17-18 and 31-32 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
4. Claims 1-3, 5-11 and 15-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Safadi's US Publication No. 2003/0126086 (hereinafter "*Safadi*").
5. Claims 12-14 and 21-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Safadi*, in view of Suzuki's US Patent No. 6,463,445 (hereinafter "*Suzuki*").

### ***Objections to the Claims***

Claims 19 and 23 were objected to because of informalities. Applicant respectfully submits that Claims 19 and 23 are in condition for allowance in light of amendments made above.

### ***New Claims***

Claims 33 and 34 are new. However, in the Office Action of August 6, 2008, the Examiner determined that the same language recited in these claims would be allowable subject matter. Accordingly, Claims 33 and 34 are in condition for allowance.

### ***35 U.S.C. § 101 Rejections***

Claim 27 was rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicant respectfully submits that Claim 27, as amended, is now in condition for allowance.

### ***35 U.S.C. § 112, First Paragraph Rejections***

Claims 11, 17, 18, 31, and 32 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. To establish a *prima facie* case that claims may be rejected under § 112, first paragraph, the Office Action has the burden of

providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the Application as filed. MPEP § 2163.04(I).

As for Claim 11, it recites in pertinent part “an identifier of a first digital rights management dynamically installable transcoding module.” In rejecting this claim under § 112, first paragraph, the Office Action relies upon ¶¶ [0036] and [0037] of Applicant’s specification, which refers to a “DRM system.” Applicant respectfully directs the Examiner’s attention to the liberal use of the term “module” throughout Applicant’s specification. For example, ¶ [0016] refers to a DRM system that provides “reconfigurable software module[s] containing dynamically-installable parsing software objects that allow the reading and protection of data, which data uses a particular file format type or compression technique, with a selected one of a set of DRM systems.” For at least this reason, Applicant respectfully submits that one of ordinary skill in the art would recognize that the Applicant was in possession of the invention as claimed in Claim 11 and therefore the Office Action has failed to state a *prima facie* case under § 112, first paragraph.

Claim 17 recites elements related to “writing the mapped rules to the output file via a transcoding module.” The Office Action at 4 rejected this claim, reasoning that the claim fails to find support in the specification. Applicant respectfully directs the Examiner’s attention to at least ¶¶ [0024], [0028], [0032]-[0034], [0036], and [0042]. Paragraph [0042], for example, discloses “the driver 230 translates the DRM system identifiers to conform with the rules of the DRM system associated with the output file 225.” Therefore, it would be apparent to one of ordinary skill in the art that a “DRM system” comprises “rules.” Paragraph [0042] continues by reciting “the driver [i.e., transcoding module] 230 generates [i.e., maps] DRM rules for the output file....” Based on at least the quoted sections, Applicant respectfully submits that one of ordinary skill in the art would recognize that the Applicant was in possession of the invention as claimed in Claim 17. For at least this reason, Applicant respectfully submits that the Office Action has failed to state a *prima facie* case under § 112, first paragraph.

Claims 18, 31, and 32 recite similar elements to Claim 17 and should be allowable for similar reasons.

### **35 U.S.C. § 102(e) Rejections**

Claims 1-3, 5-11, and 15-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Safadi*. Applicant respectfully traverses because *Safadi* does not contain each and every element recited in as complete detail and as arranged in Claims 1-3, 5-11, and 15-20. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, described in a single prior art reference.” MPEP § 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as contained in the . . . claim.” MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. MPEP § 2131.

#### **Independent Claims 1, 8, 11, 19: Dictionary.com is an impermissible reference to support a § 102(e) rejection.**

In rejecting Claims 1, 8, 11, and 19, the Office Action relied in part upon an internet website, Dictionary.com, for an interpretation of the term “module.” For example, the Office Action at 5 states, “according to DICTIONARY.com, [module] is interpreted as part of a program that performs a distinct function such as encrypting/decrypting, compressing, formatting and etc.”

Generally, a reference cited by the Examiner must be a U.S. patent, a U.S. application publication, or a WIPO publication of an international application under PCT Article 21(2) in order to be used to reject a Claim under 35 U.S.C. § 102(e). MPEP § 706.02(f)(1)(I)(A). While an extra reference can be used to show the meaning of a term in the primary reference in a § 102 rejection, **it may not be used to expand the meaning of terms and phrases** used in the reference. MPEP § 2131.01(II) (emphasis added). Applicant respectfully submits that the Office Action’s use of a Dictionary.com definition did just that: it expanded the meaning of the terms used in *Safadi*.

For example, the term “module” (or “modular”) is not even used in the *Safadi* reference. Accordingly, when the Office Action at 5-7 interprets “module” as merely a “part of a program that performs a distinct function,” Applicant respectfully submits that, for at least this reason, the interpretation has been inappropriately used to expand *Safadi* to anticipate the transcoding module elements of Claims 1, 8, 11, and 19.

Moreover, Applicant respectfully submits that it also appears that the definition is used to expand the meaning of *Safadi* because the Office Action, at 5-7, further reasons that

“encryption/decryption module and format conversion module are qualified as one type of transcoding modules.” Applicant notes that *Safadi* is silent as to these specific modules, and therefore, the inappropriately broad definition of “module” just discussed has been used to expand the meaning of *Safadi*.

Applicant respectfully submits that Dictionary.com is not permissible as a prior art reference for the further reason that the Examiner cannot establish the date of the definition’s publication. A person shall be entitled to a patent unless it was described in a printed publication **before the invention**. 35 U.S.C. § 102. Because it cannot be determined that the definition relied upon by the Office Action was published before this Application’s date of invention, Applicant respectfully submits that the Office Action has not established a *prima facie* case based on what a person of ordinary skill in the art would know at the time of invention.

By way of further example as to why Dictionary.com’s use is inappropriate, Applicant has accessed the site and cannot locate a definition of “software module,” despite the Office Action’s assertion. Instead, Applicant has located a different definition not the same as the recitation contained in the Office Action. Thus, Applicant respectfully submits that the Office Action may be relying upon “common knowledge” in the art without evidentiary support in the record. Under MPEP § 2144.03(A), facts beyond the record may only be noticed when they are “capable of such instant and unquestionable demonstration as to defy dispute.” *Id.* citing *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). As discussed above, it is not capable of instant and unquestionable demonstration that the transcoding modules claimed in Claims 1, 8, 11, and 19, are merely “part of a program that performs a distinct function such as encrypting/decrypting, compressing, formatting, and etc.” as asserted by the Office Action at 5. Therefore, Applicant respectfully submits that the Office Action’s assertions fail to find necessary support in the record as a basis to reject these claims.

For at least the foregoing reasons, Applicant respectfully asserts that the Office Action’s reliance on Dictionary.com to expand the meaning of *Safadi* was impermissible and therefore the rejections of Claims 1, 8, 11, and 19 is unsupported by the art.

**Independent Claims 1, 8, 11, 19: *Safadi* fails to anticipate dynamically installable transcoding modules.**

In addition, Applicant respectfully submits that *Safadi* fails to anticipate all the elements of Claims 1, 8, 11, and 19. Generally, *Safadi* discloses a proxy agent to convert native DRM schemes into a scheme “compatible with [a] consumer device.” *See* Abstract. Accordingly,

*Safadi* fails to anticipate all the elements in at least as complete detail and as arranged in Claims 1, 8, 11, and 19. For example, Claim 1 recites the following:

A method of delivering digital media, the method comprising:  
receiving digital media from a first device;  
receiving a selection of a plurality of **dynamically installable transcoding modules, including a file format module and at least one of a compression module and an encryption module;**  
**dynamically installing the selection of a plurality of dynamically installable transcoding modules;**  
transforming the digital media in accordance with the selected transcoding modules; and  
delivering the transformed digital media to a second device.

Contrary to the Office Action's assertions, *Safadi* is completely silent on a "modular solution to the problems created by multiple file format types, compression techniques, and DRM systems" as disclosed in Applicant's specification at ¶¶[0027]. Accordingly, Applicant has amended the Claims to make the modular solution more clear, but not to change the scope of the Claims. The present amendments find ample support in the specification at least in ¶¶[0027] where one embodiment includes "various classes [that] can be installed and updated without requiring complicated modifications to the driver 230, the use of such object class libraries 237-249 provides flexibility as new content packaging, including file format types, compression techniques, and protection technologies, emerge." Additional disclosures related to the modular solution are contained in at least ¶¶[0030], [0031], [0032], and [0034].

Despite the present amendments, Applicant respectfully submits that *Safadi* does not inherently describe the dynamically installable transcoding module elements of Claims 1, 8, 11, and 19 either explicitly or inherently. For example, the Office Action relies upon paragraph ¶[0031] of *Safadi* which discloses merely that "[t]he original and native DRM schemes may comprise at least one of copy protection, copy control, content access control, encryption of the content, decryption of the content, distribution control, and usage rights." Nothing in that section of *Safadi* leads to the conclusion that dynamically installable transcoding modules, as claimed in amended Claims 1, 8, 11, and 19 are explicit or inherent. Other sections of *Safadi* cited by the Office Action are similarly silent on dynamically installable transcoding modules.

For at least these additional reasons, Applicant respectfully submits that the §102(e) rejection of Claims 1, 8, 11, and 19 is unsupported by *Safadi* and therefore the Office Action's §102 rejection is defective.

**Independent Claims 8 and 11: Safadi does not anticipate a user selection of transcoding modules.**

By way of further example why the rejections are unsupported by the art, Claim 8 recites in pertinent part: “A method of distributing digital media, the method comprising . . . receiving a **user selection** of a first digital rights management transcoding module, the first digital rights management transcoding module being one of a plurality of pre-determined digital rights management transcoding modules.” In asserting that *Safadi* anticipates these elements, the Office Action relied upon ¶¶ [0021] and [0017] of *Safadi*. These sections of *Safadi* are silent on these elements of Claim 8, as is the balance of *Safadi*. The most these sections disclose is that a consumer requests content at ¶ [0021]. Thus, it does not expressly disclose the selection of elements in Claims 8 or 11.

Because *Safadi* discloses only that a consumer requests content, *Safadi* cannot be said to anticipate a user selection of a first digital rights management transcoding module, the first digital rights management transcoding module being one of a plurality of pre-determined digital rights management transcoding modules. Claim 11 recites similar elements and should be allowable at least by similar reasoning.

For at least these additional reasons, Applicant respectfully submits that the rejection of Claims 8 and 11 is unsupported by *Safadi* and therefore the Office Action’s §102 rejections are defective.

**Claims 2, 3, 5-7, 9, 10, 15-18, 20-22, 24-26, and 28-34.**

Dependent Claims 2, 3, 5-7, 9, 10, 12-18, 20-22, 24-26, and 28-32 depend from allowable independent claims and are therefore allowable at least by their dependency. In addition, Claims 2, 3, 5-7, 9, 10, 12-18, 20-22, 24-26, and 28-32 (as well as new Claims 33 and 34) recite elements not anticipated by *Safadi*, several examples of which are discussed below.

**Dependent Claims 5-7: Safadi does not teach a consumer, operator, or driver module selection from a plurality of transcoding modules.**

For example, *Safadi* does not teach the selection of elements in dependent Claims 5-7. The Office Action at 9-10 asserts that *Safadi* teaches a consumer selection of the plurality of transcoding modules of Claim 5, the operator selection of transcoding modules of Claim 6, and the driver module selection of a plurality of transcoding modules of Claim 7 citing ¶¶ [0031], [0028], [0015], and [0017]. In rejecting the Claims, it was said that a bitstream to a device

“MUST be encoded and guarantee[d] to decode with a selected known decoding technique according to decode with a *selected* known decoding technique.”

Applicant respectfully disagrees that *Safadi* discloses the elements of Claims 5-7. For example, *Safadi* teaches only that a device relies upon a particular DRM scheme, not **a consumer selection** of a plurality of transcoding modules as claimed in Claim 5. Similarly, *Safadi* is completely silent on an **operator selection** of a plurality of transcoding modules, as claimed in Claim 6, and it also is completely silent on a **driver module’s selection** from a plurality of transcoding modules, as claimed in Claim 7. For these additional reasons, the elements of Claims 5-7 are not disclosed by the *Safadi* reference so the Office Action’s rejection is unsupported by the art. Accordingly, for these additional reasons, Applicant respectfully submits that the Office Action’s rejection of Claims 5-7 is defective.

**Dependent Claim 10: Safadi does not teach a dynamically created format transcoding module.**

By way of further example, *Safadi* also fails to teach the elements of dependent Claim 10. Dependent Claim 10 recites the following:

The method of Claim 8, further comprising dynamically creating at least one of a format transcoding module or a writer transcoding module corresponding to the file format types of the received files and the selected file format types, and wherein reformatting the files comprises **using the dynamically-created format transcoding module or writer transcoding module to reformat the files.**

In rejecting this Claim, the Office Action at 10 asserted that *Safadi* teaches the highlighted elements by relying on ¶¶[0017] and [0028]. Applicant respectfully disagrees. Paragraph [0017] discloses merely that “[i]t would be further advantageous if such a system provides for converting the original DRM scheme initially used by the content provider.” To the extent that *Safadi* discloses reformatting, the method of reformatting appears static. Thus, the relied upon sections, as well as the remainder of *Safadi*, are completely silent on using a dynamically-created format transcoding module or writer module to reformat the files. For this additional reason, Applicant respectfully submits that not all the elements of Claim 10 are disclosed by the *Safadi* reference, so the rejection is defective.

### **35 U.S.C. § 103(a) Rejections**

Claims 12-14 and 21-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Safadi*, in view of *Suzuki*. Generally, *Suzuki* teaches a system and method “for automatic format conversion” that merely requires a “data structure [that] identifies the encoding format.”

#### **Independent Claims 23 and 27.**

Applicant respectfully disagrees that *Safadi* in view of *Suzuki* teaches or suggests every element of amended independent Claims 23 and 27.

At the outset, for all the reasons discussed above, *Safadi* in view of *Suzuki* fails to teach or suggest dynamically installable transcoding modules as claimed in Claims 23 and 27.

In addition, the cited combination of *Safadi* and *Suzuki* fails to teach or suggest other elements of Claims 23 and 27. For example, amended independent Claim 23 recites in pertinent part:

A system for protecting digital presentations via a digital rights management system, the system comprising:  
a module configured to interact via a first storage device storing an input data file;  
a module configured to interact via a second storage device;  
a translation driver;  
a digital rights management **dynamically installable transcoding module** encryption library, accessible by the translation driver, the encryption library comprising a plurality of modules, each module configured to encrypt data according to a particular digital rights management technique;  
a file format type **dynamically installable transcoding module** library, accessible by the translation driver, the file format type transcoding` module library comprising a plurality of modules, each module configured to read data using a different file format type;  
a file writer **dynamically installable transcoding module library**, accessible by the translation driver, the file writer transcoding module library comprising a plurality of modules, each module configured to write to a different file format type;  
a **dynamically installable transcoding software module** configured to:  
.  
.  
**dynamically installing the selection of a plurality of dynamically installable transcoding modules.**

In rejecting Claim 23, the Office Action conceded that *Safadi* does not teach or suggest a translation driver, a transcoding module library, or a “compression / decompression technique.”



Applicant agrees with this interpretation of *Safadi*. Applicant, however, respectfully disagrees that *Suzuki* remedies the defect.

The Office Action at 12 reasons that *Suzuki* “teaches providing an effective multimedia information retrieval system including a method for automatic data format conversion by using a transcoding tool library.” Applicant has reviewed the “transcoding tool library” disclosed in *Suzuki* and disagrees that it teaches or suggests a dynamically installable transcoding module library, accessible by the translation driver, the file writer transcoding module library comprising a plurality of modules, each module configured to write to a different file format type. First, *Suzuki*’s tool library is silent on a **dynamically installable** module library as claimed in amended Claim 23. Moreover, the most that *Suzuki* discloses about its tool library is the following: “At step 540, the transcoding device 350 requests and receives appropriate transcoding tools from a transcoding tool library 360 and performs a transcoding process of the MM Contents into a Transcoded Bitstream. If decoding is not required, then the MM contents 246b can be directly transcoded . . .” Col. 12, lines 55-67. While *Suzuki* makes mention of a “library,” the referred-to library appears to be merely a static library. That is, it does not disclose the modular approach claimed in Claims 23 and 27.

For at least this additional reason, Applicant respectfully submits that the Office Action has failed to state a *prima facie* case under 35 U.S.C. § 103 and therefore respectfully requests withdrawal of the rejection of Claim 23. Claim 27 claims similar elements and should be allowable by similar reasoning.

#### **Claims 12-14, 21, 22, 24-26, 28-34.**

Applicant respectfully submits that Claims 12-14, 21, 22, 24-26, 28-32 depend from allowable independent claims and are therefore allowable at least by their dependency. In addition, Applicant respectfully submits that the cited combination of *Safadi* and *Suzuki* fails to teach or suggest every element of Claims 12-14, 21, 22, 24-26, 28-32 (as well as new Claims 33 and 34).

For example, amended dependent Claim 14 recites the following:

The method of Claim 12, further comprising (i) receiving an identifier of a second compression format to be used in the output file **via a dynamically installable transcoding module**, the format being one of a plurality of pre-determined compression formats, (ii) compressing the unencrypted data according to the second compression format **via a dynamically installable transcoding module**, and (iii) a encrypting the

compressed unencrypted data **via a dynamically installable transcoding module.**

The Office Action conceded that *Safadi* failed to teach or suggest all the elements of Claim 14. Applicant agrees with this conclusion. However, the Office Action asserted that *Suzuki* teaches a “compression / decompressing technique” in rejecting Claim 14. It is unclear which specific elements of Claim 14 a “compression / decompression technique” is meant to teach or suggest. However, to the extent that the Office Action relies on Col. 12, lines 55-67 (at 12 of the Office Action), that section of *Suzuki* merely recites as follows: “At step 540, the transcoding device 350 requests and receives appropriate transcoding tools from a transcoding tool library 360 and performs a transcoding process of the MM Contents into the Transcoded Bitstream.” Thus, Applicant respectfully submits that *Suzuki*, alone or in combination with *Safadi*, fails to teach or suggest the dynamically installable transcoding modules as claimed in amended dependent Claim 14. For at least this reason, Applicant respectfully submits that the Office Action has failed to state a *prima facie* case under 35 U.S.C. §103. Claims 12-13 and 21-32 contain similar elements and are allowable at least by similar reasoning. Withdrawal of the rejections of Claims 12-14 and 21-32 is respectfully requested.

### **CONCLUSION**

For at least the reasons above, Applicants respectfully submit that all pending claims are allowable and request that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the arguments presented are believed sufficient to address the Examiner's rejections. Likewise, failure of the Applicants to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing arguments, and it is therefore not believed necessary to respond to every position taken by the Examiner with which Applicants do not agree.

The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to AXIOS Law Group's deposit account. The deposit account number is 50-4051.

Respectfully submitted,

AXIOS LAW GROUP

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